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November 19, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: CG Docket Nos. 11-116, 09-158, and 98-170
Filing Date of Comments of Impact Telecom, Inc. and COMPTEL on Public Notice Asking Parties to Refresh the Record Regarding "Cramming"

Dear Ms. Dortch:

On November 18, 2013, Impact Telecom, Inc. and COMPTEL through this office uploaded comments to the Electronic Filing System in the above-referenced docket in response to Public Notice DA 13-1807. Upon discovering the submission did not produce a receipt, our secretarial staff (Ms. Shirley Friend) contacted the FCC ECFS Helpdesk on the evening of November 18 to request assistance.[1] Despite these efforts, as of the morning of November 19, 2013, the comments did not appear in ECFS. The document may well appear on ECFS at some point as having been filed on November 18. In any event, as a precaution, we are re-submitting the comments today (November 19) with a request that they be deemed timely filed on November 18. In the alternative, the comments are filed well in advance of the December 2, 2013 due date for filing reply comments, and so would at least constitute timely filed reply comments.

If you have any questions or need additional information, please do not hesitate to contact me at (202) 659-5800. Thank you for your cooperation and assistance in this matter.

Sincerely

James Lister

James H. Lister

cc: B. Lynn Follansbee (lynn.follansbee@fcc.gov)
Angie Kronenberg, COMPTEL
Elisabeth H. Ross, Birch Horton Bittner & Cherot, PC

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[1] The FCC representative answering the call proceeded to record Ms. Friend's name, this law firm's name, telephone number and e-mail address.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")	)	CG Docket No. 11-116
	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF IMPACT TELECOM, INC. AND COMPTEL ON PUBLIC NOTICE ASKING PARTIES TO REFRESH THE RECORD REGARDING "CRAMMING"

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AmericaTel Corporation, and
Matrix Telecom, Inc.

November 18, 2013

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EXECUTIVE SUMMARY

In these comments, Impact Telecom, Inc., on behalf of itself and its subsidiaries Matrix Telecom, Inc. and AmericaTel Corporation ("Impact"), and COMPTEL, the leading industry association representing competitive communications service providers and their supplier partners, offer the perspective of long distance carriers (IXCs) whose charges for regulated long distance telephone service are billed to the consumer on their behalf by the LEC. This practice benefits consumers because it: (1) helps keep long distance rates low by saving the substantial cost of printing and mailing an additional long distance bill; (2) provides the convenience of a single bill covering both local and long distance services; and (3) makes possible a specialized long distance service (dial-around calling) in which the consumer does not provide the IXC with their name and address.

If the FCC adopts cramming rules that require LECs to obtain a customer's affirmative consent before placing third party charges on a bill, or other similar measures, the FCC should preserve an exception for LEC billing of charges by regulated long distance carriers. The FCC should strive to prevent the bad actors (the crammers) from harming customers, while limiting any unintended damage to good actors (those who do not cram but are dependent on LEC billing of their services). To date, the FCC, the States, and the major LECs have consistently recognized the distinction between LEC billing of IXCs' regulated telecommunications service which customers expect to see on their bills and LEC billing of unregulated third party services. This distinction remains critical because it draws a line between third parties who are already subject to FCC enforcement action (IXCs) and third parties who are beyond the FCC's jurisdiction. The FCC should continue to respect that distinction if it adopts additional rules. In the end, the FCC should not disrupt service to consumers provided by "honest" IXCs by regulating the LECs who bill IXC services, because the FCC can take enforcement actions against non-compliant IXCs directly.

Alternatively, if the FCC concludes that it must apply new rules to minimize the risk cramming on LEC billing of IXC long distance charges, it should extend its slamming rules for this purpose. It could require that the IXC use TPV or an LOA to verify a customer's enrollment in any LEC billed service plan that involves a monthly minimum charge imposed regardless of whether a customer uses the service that month.

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COMMENTS OF IMPACT TELECOM, INC. AND COMPTEL
ON PUBLIC NOTICE ASKING PARTIES
TO REFRESH THE RECORD REGARDING "CRAMMING"

Impact Telecom, Inc. on behalf of itself and its subsidiaries Matrix Telecom, Inc. and AmericaTel Corporation (collectively, "Impact") and COMPTEL, the leading industry association representing competitive communications service providers and their supplier partners, respectfully submit these comments in response to the FCC's Public Notice (DA 13-1807) dated August 27, 2013, asking parties to refresh the record in its rulemaking proceeding regarding preventing unauthorized billing of consumers, known as "cramming." The Public Notice seeks comment on ways to prevent cramming of charges billed by the consumer's local exchange carrier ("LEC") on behalf of third party providers. There have been complaints by consumers about cryptic mystery charges on local phone bills that, upon investigation, turn out to be for psychic hotline services, identity theft prevention services and other services that have nothing to do with the telephone services that the consumers expect to see on a local phone company bill.

I. INTRODUCTION

In these comments, Impact and COMPTEL provide the FCC with the perspective of long distance carriers (IXCs) whose charges for regulated long distance telephone service are billed to the consumer on their behalf by the LEC. This practice: (1) saves the substantial cost of printing and mailing an additional long distance bill, thereby helping to keep rates low, (2) provides the consumer with the convenience of a single bill covering both their local and long distance telephone service, and (3) makes possible a specialized long distance service (dial-around calling) in which the consumer does not provide the IXC with their name and address.

Matrix and COMPTEL recommend that if the FCC adopts cramming rules that require LECs to obtain a customer's affirmative consent before placing third party charges on a bill, or other similar measures, the FCC should preserve an exception for LEC billing of charges by IXCs. The FCC should strive to prevent the bad actors (the crammers) from hurting customers, while limiting the unintended collateral damage to good actors (those who do not cram but are dependent on ILEC billing of their services). To date, the FCC, the States, and the major LECs have consistently recognized the fundamental distinction between LEC billing of third party regulated telecommunications service and LEC billing of unregulated third party services. This distinction remains pertinent because it draws a line between third parties who are subject to FCC enforcement action (IXCs) and third parties who are beyond the FCC's reach. The distinction also draws an appropriate line between charges the consumer expect to see on their bill (charges for telephone calls) and charges the consumer may not expect to see (charges for unregulated service). The FCC should continue to respect that distinction if it adopts additional rules. Alternatively, if the FCC decides to apply rules applicable to regulated IXCs, it should extend the slamming rules to which IXCs are subject and adapt them for this anti-cramming purpose, rather than regulate the LEC.

II. LEC BILLING OF DIAL-AROUND AND 1+ LONG DISTANCE SERVICE

Impact provides dial-around long distance service through its subsidiaries AmericaTel Corporation and Matrix Telecom, Inc. [1] This service allows the consumer to bypass their pre-subscribed long distance carrier sporadically on a call-by-call basis by dialing a short access code based on the dial-around IXC's CIC code before dialing the telephone number of the called party. [2] Consumers dial these calls directly – there is no need for the consumer to dial one telephone number to reach a carrier platform, and then another telephone number to reach the called party. Impact offers attractive domestic and international rates for dial-around calling.[3]

Dial-around service fills a special market niche. A customer might see low advertised dial-around rates for calls to a particular country, and use the dial-around service for calls to that country, all while keeping their regular pre-subscribed 1+ long distance carrier for use in making other long distance calls. Dial-around service can be useful for domestic long distance calling as

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1 Impact's subsidiary AmericaTel provides primarily international service and its subsidiary Matrix provides primarily domestic service.

2 47 CFR 61.19(b) (describing dial-around long distance service).

3 The following table provides examples of casual dial-around and subscribed dial-around rates charged by Impact affiliated brands:

Impact Brand	**Access Code**	**Rate / Jurisdiction**	**Website reference**
Excel (dial-around and subscribed dial-around)	10-10-811	$0.029 per min. interstate	www.10-10-811.com
Excel (dial-around and subscribed dial-around)	10-10-811	$0.029 per min. to Germany (international)	www.10-10-811.com
AmericaTel (dial-around)	10-16868	$0.59 per call connection fee $0.089 per min. to Philippines (international)	www.101-6868.com

well. The FCC has noted that dial-around calling may be a valuable competitive alternative for consumers.[4] Not all customers have the means or desire to pay a large monthly flat rate for a wireless or VoIP service that includes unlimited domestic long distance minutes at no per minute cost. Also, such monthly flat rates are often limited to domestic calling and so do impose a significant per-minute rate for international calling.

In many circumstances, customers do not subscribe to dial-around services but, instead, purchase service on a casual basis. Consumers dial the advertised access code when placing a long distance call, but never communicate with a dial-around IXC representative, and so do not provide the dial-around IXC with their name and address.[5] Because the name and address are necessary in order to mail a bill to the consumer directly, such casual dial-around service must be billed through the LEC that provides the local telephone service for the call originator. Without LEC billing, casual dial-around long distance service would no longer exist.

The ability to place calls on a casual basis is a key attraction of dial-around service. A customer's incentive to buy the service diminishes if the customer must first contact the dial-around IXC to provide a name and address and otherwise initiate an account relationship before making any calls, particularly where the customer intends to place just a few calls. This characteristic of casual dial-around service also makes it difficult to establish a contract between

[4] *Report and Order, In the Matter of Policies and Rules Concerning the International Interexchange Marketplace*, 16 FCC.Rcd. 10647, ¶19 (2001) ("rates remain excessive for consumers who do not subscribe to carriers' discount calling plans or take advantage of competitive dial-around rates.")

[5] See *Order on Reconsideration, In the Matter of Policies and Rules Concerning the Interstate Interexchange Marketplace*, 12 FCC.Rcd. 15014, ¶¶18, 32 (1997) (noting the lack of opportunity to establish an account when a consumer places casual dial-around calls)

the carrier and the consumer. To facilitate the service, the FCC carved a niche exception from its rule de-tariffing long distance services, so that IXCs may still tariff dial-around service today.[6]

Impact also provides a subscribed dial-around long distance service and ordinary pre-subscribed 1+ long distance service. For subscribed services, the consumer must contact Impact to establish an account, so it is technically possible for Impact to obtain a customer name and address, and then mail a bill directly to the consumer. Impact offers a variety of products where it does directly bill the consumer. However, the printing and mailing costs involved in direct billing are prohibitive where bills are small. Using LEC billing keeps the carrier's costs down, which in turn keeps prices to the consumer down. Long distance rates have been falling for years, so bills for ordinary 1+ long distance can be quite small. The bills of a sporadically used dial-around IXC can be even smaller in relation to substantial printing and mailing costs.

Many consumers also prefer the convenience of limiting the number of telephone bills they receive. For example, a consumer might purchase local phone service from their LEC, purchase 1+ long distance service from a major IXC, and sporadically use one dial-around IXC to place calls to family in one country and another dial-around IXC to place calls to friends in another country. Rates vary by destination country and IXC. By using dial-around IXCs, a savvy consumer can pick and choose which carrier is best for which destination, without continuously changing pre-subscribed IXCs. That consumer will likely prefer to receive a bill from the LEC that also covers the occasional dial-around long distance calls placed using the two dial-around IXCs, rather than four separate telephone bills.

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6 *Id*; 47 CFR 61.19(b) (codifying de-tariffing exception for dial-around long distance). Tariffing dial-around service is optional. Carriers may instead rely on their advertisements and sales literature to form informal contracts.

Bundled billing of telecommunications services has become the norm. Accordingly, consumers are not at all surprised to see long distance telephone charges on their local telephone bill.

III. THE FCC SHOULD NOT DISRUPT THE MARKET FOR LEC BILLED LONG DISTANCE SERVICE PROVIDED BY FCC REGULATED IXCS

Impact and COMPTEL urge the FCC not to disrupt and competitively distort the long distance market by adopting broad rules that make it difficult for honest providers of long distance service to use LEC billing. As discussed above, LEC billing is essential to casual dial-around long distance, is the key to economically billing smaller quantities of subscribed dial-around service and 1+ long distance service, and provides the consumer the convenience of bill consolidation.

To date, the FCC, the States, and the larger LECs have all appropriately recognized that LEC billing of regulated long distance service is fundamentally different than LEC billing of unregulated non-telecommunications services such as psychic hotlines and identify-theft prevention. Accordingly, in major actions taken to combat cramming, the States, the FCC, and major ILECs have limited the scope of their actions to avoid disturbing the market for LEC billed long distance services. For example:

- Vermont has enacted an aggressive statute prohibiting most billing of third party charges on LEC bills, but that statute appropriately exempts "billing for direct dial or dial around services initiated from the consumer's telephone." 9 VSA § 2466(f)(1)(B).

- Likewise, Illinois adopted a statute prohibiting most LEC billing of third party charges, but exempted the charges of long distance providers and other carriers regulated by the State PUC. See 815 ILCS 505/2HHH (exempting "services or goods provided by a telecommunications carrier subject to the provisions of Section 13-903 of the Public Utilities Act.").

- The FCC has effectively recognized the lower risk posed by third party carrier charges, such as long distance charges. It adopted rules in this docket requiring that charges for third party non-telecommunications services be placed in "distinct section of the bill separate from all carrier charges," and separately sub-totaled.[7]

- Major ILECs have eliminated or restricted billing of third party charges for non-telecommunications services while continuing to bill third party charges for long distance and other telecommunications services.[8]

Impact and COMPTEL urge the FCC to continue to recognize the fundamental distinction between LEC billing of regulated IXCs charges and LEC billing of the charges of unregulated providers of non-telecommunications services. This distinction is appropriate and valid for two key reasons. First, as discussed above, consumers expect to see charges for a variety of types of telephone service on their telephone bill, including long distance. They appreciate the convenience of receiving consolidated telephone bills, rather than multiple bills, each covering one type of telephone service. Conversely, consumers may not expect to see charges for unregulated non-telecommunications services.

Second, the FCC already has new procedures in place to address regulated telecom providers' cramming. The FCC has jurisdiction to issue a Notice of Apparent Liability for Forfeiture ("NAL") or take other enforcement action directly against regulated IXCs engaged in cramming, up to and including, excluding the offender from the market by revoking its authority under 47 U.S.C. § 214 to provide long distance service. The FCC has declared that an IXC which engages in cramming of purported long distance charges billed through LECs has

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[7] 47 CFR 64.2401(a)(3); see *Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"),* 27 FCC.Rcd. 4436, ¶63 (2012) ("the rule alerts consumers that the charges are not all for telecommunications services and that further inquiry may be appropriate.").

[8] See "Verizon to End Most Third party Billing by Year's End," TR Daily (March 21, 2012); http://www.centurylink.com/common/popups/residential/third-party-calling.html (last visited November 11, 2013); http://www.att.net/smartcontrols-Cramming (last visited November 11, 2013).

committed an unjust and unreasonable action in violation of 47 U.S.C. § 201(b), and has issued NALs to IXCs for that violation.[9] The FCC cannot exercise this jurisdiction directly when the crammer is an unregulated provider, however. It must get at the problem indirectly by imposing rules on the LECs which are subject to its jurisdiction.

IV. REQUIRING REGULATED LONG DISTANCE CARRIERS TO ARRANGE A DIRECT COMMUNICATION BETWEEN THEIR EXISTING AND NEW CUSTOMERS AND THE LEC BEFORE LEC BILLING CONTINUES OR STARTS WOULD DISRUPT THE MARKET AND LIMIT CONSUMER CHOICE

Impact's and COMPTEL's primary concern related to the Public Notice is that the FCC may require carriers to obtain a customer's affirmative consent before placing third party charges on bills.[10] If the FCC adopts this rule without excepting regulated long distance service charges, it may harm the public interest. Such a blanket "opt-in" requirement would likely drive casual dial-around long distance service from the market and would increase the costs of providing other types of long distance services, thereby leading to increased prices and reduced consumer choice. By continuing to distinguish LEC billing of regulated long distance service from LEC billing of unregulated non-telecommunications services, the FCC will avoid that outcome.

A rule which requires customers to speak with their LEC to authorize LEC billing before they can use long distance services has great potential to disrupt and competitively distort the market. Consumers might not understand that agreeing to an invitation that they globally block all LEC billing of third party services might disrupt their ability to maintain, change, or supplement their long distance services. Consumers who are contacted by their LEC and asked

9 See the NALS issued by the FCC on June 16, 2011 to Cheap2Dial Telephone, LLC (FCC 11-90), VoiceNet Telephone, LLC (FCC 11-91), Norristown Telephone Co., LLC (FCC 11-88), and Main Street Telephone Company (FCC 11-89) (collectively, the "June 16, 2011 NALs").

10 See Public Notice, p. 2 (DA 13-1807).

"would you like us to block any billing by us of third party charges" might not realize that taking that step would effectively block some dial-around and 1+ long distance services.

If the FCC mandates a pre-authorization to bill procedure, it will likely drive casual dial-around service from the market. As discussed above, consumers are attracted to that service in large part by the ability to immediately begin using the advertised service for some small segment of their calling through dialing the CIC-based access code. They will likely not use the service if they have to take the time to contact the dial-around IXC to initiate an account. The essential casual nature of the service will be completely defeated if the consumer has to first contact their LEC to authorize the third party billing process. The LEC will not be the dial-around IXC advertising the service, and so will not be an obvious consumer point of contact.

There is no reason to drive casual dial-around service from the market by banning the only effective means of billing for that service (LEC billing). True casual dial-around service is billed only when consumers actually use the service by placing telephone calls. The consumer's authorization to be billed comes from an affirmative act of dialing a call using the dial-around IXC's CIC code as an access code. The consumer then sees a listing of calls made on the bill received from the LEC. For its part, Impact only charges for casual dial-around service when the customer has actual usage.[11] Therefore, the service is not vulnerable to cramming.

A pre-authorization to bill rule will also distort the markets for subscribed dial-around long distance service and pre-subscribed 1+ long distance service. Subscribing to these services will become much more difficult and time consuming, because the consumer will have to both initiate the account with the IXC and speak with their LEC to authorize the LEC billing. In fact,

[11] There may be a minimum monthly charge if the consumer does have usage. That charge goes to the calculation of the effective rate. The usage confirms the consumer wanted the service.

the IXC will probably need to initiate a three-way call with the consumer and the LEC so that the IXC can verify that the consumer is eligible for billing through the LEC and therefore can safely be enrolled in a LEC billed long distance service. This high hurdle will discourage customers from using LEC billed long distance services even in situations where, because their long distance charges will be small, LEC billing is the most cost-effective means of providing the service, and even where the consumer would prefer the convenience of consolidating billing.

The FCC reasonably addressed similar issues in its slamming rules. Under the slamming rules, when a pre-subscribed IXC signs up new customers, the IXC must obtain a written letter of authorization (LOA) from the customer or use a third party verification (TPV) process to verify the customer's decision.[12] The IXC then submits a PIC change to the LEC. Under the rule, the LEC must promptly implement the PIC change order submitted by the IXC, and cannot examine the TPV or LOA or contact the customer to confirm the consumer's decision to change their IXC.[13] Thus, the slamming rules avoid forcing consumers to communicate with two carriers before changing their long distance service. Also, the rules recognize that LECs offer their own competing services, and should not be judging the validity of IXCs' customer acquisition.[14]

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[12] 47 CFR 64.1120(c).

[13] 47 CFR 64.1120(a)(2) ("An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.")

[14] The only situation in which a consumer needs to contact their LEC to authorize a change in pre-subscribed long distance service is if the consumer has previously taken the affirmative step of contacting their LEC to put in place a "PIC-freeze." 47 CFR 64.1190. Most consumers do not request PIC-freezes. PIC-freezes are extremely difficult to overcome. Initiating a three-way conference call among the consumer, the IXC, and the LEC is sometimes the only way to do so. Rule 64.1190(e)(2). The FCC requires that LECs verify a consumer's decision to impose a PIC-freeze through stringent verification procedures and that the LEC fully describe to the consumer the barrier to changing long distance providers that may result from establishing a PIC-freeze. Rule 64.1190(d)(2).

The FCC should maintain parallelism between its slamming rules and any new cramming rules it may adopt. It should not require that the consumer communicate with both the LEC and the IXC before the consumer adds or changes long distance service billed through the LEC. The FCC might instead require that the IXC take additional verification steps.

V. IF THE FCC FINDS FURTHER REGULATION OF LONG DISTANCE SERVICE BILLED THROUGH LECS IS NECESSARY, THE FCC SHOULD EXTEND THE EXISTING SLAMMING RULES

If the FCC finds that it needs to tighten regulation of IXCs who bill for long distance service through LECs in order to avoid cramming, the FCC should extend and adapt its existing slamming rules for that purpose.

Specifically, the FCC could require that the IXC obtain a LOA or a TPV that records the customer's consent to enroll in LEC billing where the IXC billing plan allows it to apply monthly recurring or monthly minimum charges regardless of whether the customer places any calls in a given month. This is the one area of somewhat elevated risk, because it is the one situation where consumers will not see a list of long distance calls on their bill from the LEC. Monthly minimum charges provide much greater level of revenue stability to the carrier, and so allow the carrier to charge lower prices, and are widely used in all aspects of the telecommunications industry (*e.g.*, most wireless plans and VoIP plans involve fixed monthly fees that apply regardless of usage). However, it is important that a customer's agreement to such fees be properly verified.

In fact, there is little risk of cramming when the consumer is billed charges that apply only when the customer actually uses the service during the month for which charges are being billed, because the act of placing the call is the consumer's consent to being charged. However, a consumer's decision to enroll in a plan that includes minimum monthly charges billed without usage could be subjected to a higher level of verification. The FCC addressed this issue well in a 2011 enforcement action. The FCC issued a group of four NALs to purported dial-around carriers which were allegedly billing cryptic monthly minimum fees through LECs to consumers whose purported enrollments in those service plans had not been verified and, switch records showed, were not actually using the service.[15] The FCC noted that the respondents in those cases had not put in place any procedures to verify enrollments.[16]

At its own initiative Impact for many years now has voluntarily required that consumer enrollments in plans that allow monthly minimum billing without usage be verified through TPV or an LOA. Impact has found this policy to be effective to ensure that consumers understand the plans they are purchasing. While the FCC may well conclude that no further regulation action is necessary at this time regarding LEC billing of the charges of regulated IXCs, making this verification process mandatory industry-wide should prevent recurrence of the incidents described in the four NALs discussed above. Based on its experience in those four cases, the FCC could also consider requiring that IXCs using LEC billing keep records of the actual number of phone calls placed by consumers utilizing their service.

However, requiring TPVs or LOAs for services that are billed only if the consumer has usage, including casual dial-around service, will be unnecessary. Actual use of the service demonstrates that charges for the calls were authorized. Requiring TPVs or LOAs will be entirely impractical or impossible in the case of casual dial-around service, because the consumer of that service generally never contacts the IXC before using the service.

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15 See VoiceNet NAL, ¶¶1, 16 (FCC 11-91); Cheap2Dial NAL, ¶¶1, 19 (FCC 11-90); see also, Mainstreet NAL, ¶¶15-17 (FCC 11-89); Norristown NAL, ¶¶13-16 (FCC 11-88).

16 See previous note.

In summary, if the FCC determines further regulatory action is necessary, extending and adapting the slamming rules will be a more effective and less disruptive way to prevent cramming of regulated IXCs' charges billed through LECs. That alternative will avoid the disruption and competitive distortion of the long distance market that would be caused by requiring the consumers to affirmatively communicate with their LEC before they can add or change third party long distance service billed through LECs.

VI. CONCLUSION

If the FCC adopts cramming rules that require LECs to obtain a customer's affirmative consent before placing third party charges on a bill, or other similar measures, the FCC should preserve an exception for LEC billing of charges by regulated long distance carriers, just as the FCC and the States have done in previous regulatory actions in this area. Alternatively, if the FCC decides that it must apply new rules to LEC billing of IXC long distance charges, the FCC should further minimize risk by extending the slamming rules to require that the IXC use TPV or an LOA to verify a customer's enrollment in any LEC billed service plan that involves a monthly minimum charge imposed regardless of whether a customer uses the service that month.

Dated: November 18, 2013

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